

REMARKS

The September 30, 2004 Office Action has been reviewed and its content carefully noted. Favorable reconsideration of this case is respectfully requested. Claims 1 through 6 are currently pending and under examination.

Claim 1 was amended to further clarify that the liquid seed material used in step b) comprises cooled mixture from step c). Support for this amendment may be found *inter alia* in the specification, as originally filed, on page 4, lines 27-31.

Claim Rejections – 35 U.S.C. §112

The Examiner has rejected claims 1-6 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement and as failing to comply with the enablement requirement. The Examiner states that she cannot find any specific example or passage in the specification that sets forth the numeric value of the critical temperature.

Applicants respectfully point out that MPEP §2163 provides

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention...There is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed. In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976).

As such, the Examiner's rejection is respectfully traversed as being improper. Contrary to the Examiner's statement, the specification describes the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had full possession of it as required by MPEP §2163. The specification clearly and unequivocally defines the critical temperature as being the temperature at which all forms of crystalline fat have changed to the molten states. (Specification: page 2, lines 14-17). A detailed explanation of how to determine

the critical temperature is also discussed. (Specification: page 2, lines 17-31) Because Applicants have satisfied the §112 written description requirement, the Examiner's rejection should be withdrawn.

With regards to the Examiner's enablement rejection, Applicants respectfully traverse the rejection as being improper and point out that MPEP §2164.01 provides

The test for enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation.

Example I of the specification contains a detailed description of the preparation of chocolate and states that immediately after rolling and the addition of more cocoa butter, the chocolate mass is heated for 30 minutes at 60°C, yielding a liquid chocolate mass. The temperature of 60°C is 20-22°C above the critical temperature. (Specification: page 7, lines 11-14). In the example, the critical temperature is in a range from about 38°C to about 40°C. Similar to the melting point of chocolate, the critical temperature is not a single value but a range. (Specification: page 2, lines 33-24). Because one skilled in the art is able to practice the claimed invention without undue experimentation, the disclosure of the present application meets the §112 enablement requirement. Thus, the Examiner's rejection should be withdrawn.

Claim Rejections – 35 U.S.C. §102

A. EP 0 521 205 A1 to Cain et al.

The Examiner has rejected claims 1, 3 and 5 under 35 U.S.C. §102(b) as being anticipated by EP 0 521 205 A1 to Cain et al. ("Cain") for reasons of record.

MPEP §2131 provides

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros.v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as contained in the ... claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

In response to the Examiner’s rejection, Applicants respectfully traverse the rejection as being improper. The claims of the present invention are not anticipated by Cain because Cain does not disclose each and every element as set forth in the claims. Cain discloses a process for making tempered chocolate. As the Examiner pointed out in the Office Action dated March 30, 2004, the chocolate is heated to 30-40°C to form a liquid. At this point, the chocolate is seeded with beta stable crystals. Unlike the claimed invention, the seeding of the chocolate in Cain requires the external addition of seeds. (Page 2, line 35:Page 3, line 3) (emphasis added) To the contrary, claim 1 requires that a liquid chocolate mass be mixed with liquid seed material comprising cooled mixture obtained from step c). The seeding agent is the cooled mixture itself and is not externally added. In addition, Cain does not disclose the heating of chocolate above a critical temperature and subsequently cooling the chocolate to a temperature between a first temperature below the melting point of chocolate and the critical temperature.

In view of the above, Cain does anticipate the claimed invention because it fails to disclose mixing a liquid chocolate mass with a liquid seed material comprising cooled mixture obtained from allowing the mixture to cool to a first temperature below the melting point of chocolate. Nor does Cain disclose a cooled mixture. Accordingly, Applicants respectfully request that this rejection be withdrawn.

B. US 4,283,436 to Soeters et al.

The Examiner has rejected claims 1, 3, 5 and 6 under 35 U.S.C. §102(b) as being anticipated by US Patent No. 4,283,436 to Soeters et al. ("Soeters") for reasons of record.

Applicants respectfully traverse the rejection as being improper. The claims of the present invention are not anticipated by Soeters because Soeters does not disclose each and every element as set forth in the claims. Soeters is directed to the use of hard fat replacers, particularly for cocoa butter, to harden milk chocolate and plain chocolate. (Abstract). At Col. 14, lines 15-34, Soeters discloses a chocolate making procedure which entails: stirring the mass to be tempered at 60°C, lowering the temperature to 30°C and seeding the mass with 0.1% of stabilized crystals from the original pre-conched mass. However, Soeters fails to disclose mixing a liquid chocolate mass with a liquid seed material comprising cooled mixture obtained from allowing the mixture to cool to a first temperature below the melting point of chocolate as is presently claimed. Nor does Soeters disclose the seed material used being at a temperature above 30°C. There is no disclosure in Soeters whatsoever regarding the conditions of the original pre-conched mixture except that it is of a certain composition and it is blended with a Hobard mixer until homogenous. (Col. 13, line 41: Col. 14, line 10).

In view of the above, Soeters does not anticipate the claimed invention because it fails to disclose mixing a liquid chocolate mass with a liquid seed material comprising cooled mixture obtained from allowing the mixture to cool to a first temperature below the melting point of chocolate. Nor does Soeters disclose the seed material being at a temperature above 30°C. Accordingly, Applicants respectfully request that this rejection be withdrawn.

C. WO 98/30108 to Willcocks

The Examiner has rejected claims 1 and 3 under 35 U.S.C. §102(b) as being anticipated by WO 98/30108 to Willcocks (“Willcocks”) for reasons of record.

Applicants respectfully traverse the rejection as being improper. The claims of the present invention are not anticipated by Willcocks because Willcocks does not disclose each and every element as set forth in the claims. Willcocks discloses the manufacture of chocolate in Example 5. The chocolate is cooled from 45°C to 33.5°C and cocoa butter seeding agent is added as disclosed in Example 2. However, unlike what is presently claimed, Willcocks fails to disclose mixing a liquid chocolate mass with a liquid seed material comprising cooled mixture obtained from allowing the mixture to cool to a first temperature below the melting point of chocolate. The composition of the presently claimed seeding material is identical to the composition of the liquid chocolate mass prepared in step a). The use of such a seeding material is not disclosed in Willcocks. Because Willcocks fails to disclosed each and every claim limitation, the Examiner’s rejection should be withdrawn.

Claim Rejections – 35 U.S.C. §103(a)**A. US 4,283,436 to Soeters et al.**

The Examiner has rejected claims 1 and 3-6 under 35 U.S.C. §103(a) as being unpatentable over Soeters for reasons for record.

Applicants respectfully point out that MPEP §2143 provides

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references

when combined) must teach or suggest all the claim limitations.

Thus, Applicants respectfully traverse the Examiner's rejection. There is no teaching or suggestion in the Soeters reference to arrive at the claimed invention. Soeters does not teach or suggest mixing a liquid chocolate mass with a liquid seed material comprising cooled mixture obtained from allowing the mixture to cool to a first temperature below the melting temperature of chocolate. In addition, Soeters fails to teach or suggest the seed material used being at a temperature above 30°C. One skilled in the art would not have a reasonable expectation of success because there is no disclosure in Soeters whatsoever regarding the conditions of the original pre-conched mixture except that it is of a certain composition and it is blended with a Hobard mixer until homogenous. Because from the facts derived from the reference, as previously set forth, there was no teaching or suggestion in the prior art to make the suggested modification, the rejection is unsupported by the art and should be withdrawn.

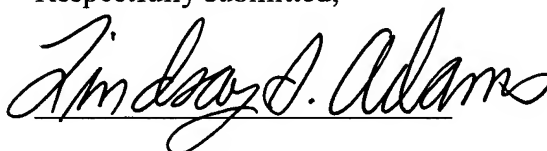
B. WO 98/30108 to Willcocks

The Examiner has rejected claim 2 under 35 U.S.C. §103(a) as being unpatentable over Willcocks for reasons of record.

Applicants respectfully traverse the Examiner's rejection. Willcocks does not render the claimed invention obvious because Willcocks fails to teach or suggest mixing a liquid chocolate mass with a liquid seed material comprising cooled mixture obtained from allowing the mixture to cool to a first temperature below the melting temperature of chocolate. The composition of the presently claimed seeding material is identical to the composition of the liquid chocolate mass prepared in step a). The use of such a seeding material is not taught or suggested by Willcocks. Because there was no suggestion in the prior art to make the suggested modification, the rejection is unsupported by the art and should be withdrawn.

Applicant respectfully submits that this application is in condition for allowance. Early and favorable action is earnestly solicited. If any additional fee is due, the amount of such fee may be charged to Deposit Account No. 50-1145.

Respectfully submitted,

A handwritten signature in black ink, reading "Lindsay S. Adams". The signature is fluid and cursive, with the first name "Lindsay" and last name "Adams" clearly legible. The signature is written over a horizontal line.

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